IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No.423 of 2005
Date of Decision:- 03.11.2006

Hazara Singh ....Appellant.

through
Mr.J.S.Cooner, Advocate

vs.

Dhan Kaur & others ....Respondents

through
None.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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SURYA KANT, J.

This appeal has been filed by the plaintiff whose suit for declaration to the effect that the judgment and decree dated 3.8.1992 passed by the Sub Judge, Ist Class, Ambala in a Civil Suit titled **Dhan Kaur vs. Hazara Singh** in terms whereof the plaintiff became absolute owner in possession of the land measuring 8 Kanals 16 marlas, fully descripted in the plaint, has been dismissed by both the Courts after holding that the above-stated consent decree dated 3.8.1992 was validly passed.

The appellant is son of Mehma Singh. As per the appellant's own case, his father Mehma Singh entered into a *Karewa Marriage* with respondent No.1. Mehma Singh was owner of an agricultural land, the details of which were given in para 1 of the plaint. It is alleged by the appellant that during the life-time of his father Mehma Singh, a family settlement took place between the appellant and his step-mother, namely, Dhan Kaur (respondent No.1.) in terms whereof his step-mother Dhan Kaur

(respondent No.1) was accepted as "limited owner" of the land measuring 8 kanals 16 marlas with the condition that she was otherwise to be looked after by the appellant and his children. It is further averred that the appellant's step-mother (respondent No.1) filed a civil suit for declaration on 23.1.1992 and in the headnote thereof, she had categorically sought to be declared "limited owner" of the subject property. The appellant conceded her claim in view of the earlier 'family settlement' and her claim having been admitted, consent decree was passed by the learned Civil Court on 3.8.1992. The appellant, however, allegedly came to know that some fraud had been played upon him by respondent No.1 by interpolating the word "absolute" in place of the word "limited" in the headnote of the plaint. On this premise, the appellant averred that the judgment and decree dated 3.8.1992 to the extent of declaring respondent No.1 as 'absolute owner' in possession of the land measuring 8 kanals 16 marlas, is void and not binding upon his rights.

The respondent No.1 contested the above-stated suit. She asserted that she was 'absolute owner' of the land in dispute, therefore, her title was rightly accepted by the appellant.

Both the Courts below, on a consideration of the evidence led by the parties, have categorically concluded that though a correction was made in the headnote of the plaint and the word "limited" was replaced by word "absolute", however, it was a case of mere correction only as in the entire body of the plaint, respondent No.1 had asserted herself to be the 'absolute owner' of the subject property. The Courts below have, thus, concluded that no fraud of any kind has been played upon the appellant.

It has also been found as a matter of fact that after the death of

the appellant's father Mehma Singh, respondent No.1 being his widow inherited a share equal to that of the appellant in the property of Mehma Singh and by virtue of Section 14 (1) of the Hindu Succession Act, 1956, she otherwise became 'absolute owner' qua her share. Both the Courts have further held and rightly so that there is no conferment of title upon respondent No.1 by way of the civil court decree which could fall within the exception of Section 14 (2) of the Act, rather the civil court decree dated 3.8.1992 was a mere re-cognition/acceptance of the 'absolute title' which respondent No.1 had acquired qua her share on the death of her husband, namely, Mehma Singh.

In view of the above-stated concurrent finding of fact which is founded upon the settled proposition of law, and which does not give rise to any substantial question of law, I do not find any merit in this appeal and dismiss the same accordingly.

November 03, 2006 **(SURYA KANT)**
poonam **JUDGE**